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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

BellSouth Petition for Forbearance)
from Application of Section 272 of the)
Communications Act of 1934, as Amended,)
to Previously Authorized Services)

CC Docket No. 96-149

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Federal Communications Commission
Office of Secretary

OPPOSITION OF MCI TELECOMMUNICATIONS CORPORATION
TO BELL SOUTH PETITION FOR FORBEARANCE

MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

MCI opposes BellSouth's request for forbearance from the application of Section 272 of the Communications Act to its reverse directory and E911 services. In the first place, forbearance from the application of any nondiscrimination provision to a dominant carrier would never be appropriate, since a prerequisite for forbearance is that enforcement of the provision sought to be forborne is not necessary to prevent discrimination. Given that the marketplace cannot be relied on to prevent unreasonable discrimination by a carrier with market power, enforcement of all nondiscrimination provisions as to dominant carriers is always necessary. Thus, forbearance as to the nondiscrimination provisions of Section 272(c)(1) and (e) must be denied.

Moreover, BellSouth refuses to include, in the directory databases it makes available to MCI, any listings for subscribers of other LECs, even though it uses such listings for its own directory assistance and reverse directory services. Such discriminatory denial of access to directory listings violates Sections 201(b) and 251 of the Communications Act. Directory assistance is a network element that an incumbent LEC must make available on an unbundled basis upon request under Section 251(c)(3), and such provision must be equal in quality to what an incumbent LEC provides itself. Moreover, Section 251(b)(3) requires a LEC to share subscriber listing information,

"consistent with what the LEC provides in its own directory," with its competitors in a timely fashion upon request. There are no exceptions for subscribers of other LECs.

BellSouth's discriminatory and illegal denial of access to other LECs' subscriber listings is extremely anticompetitive. In Florida alone, there are over 3 million subscribers of other LECs whose listings are included in BellSouth's directory database. Denial of access to millions of listings that BellSouth uses for its own directory assistance and reverse directory services makes it impossible to compete effectively with those services. Because of the tremendous competitive harm caused by such denial, the precedents cited by BellSouth, which relied on the absence of competitive harm resulting from the unseparated provision of its reverse directory services, are inapplicable.

Accordingly, the vital need for nondiscriminatory access to BellSouth's entire directory database requires the application of the nondiscrimination provisions of Section 272(c)(1) and (e) to BellSouth's directory assistance and reverse directory services. Forbearance as to those provisions is impossible. Moreover, since the nondiscrimination provisions of Section 272 apply only to separate affiliates established under Section 272(a) and (b), the full application of both the separation and nondiscrimination provisions of Section 272 is necessary to prevent BellSouth's anticompetitive ongoing denial of access to millions of listings in its directory database. Thus, BellSouth's request for forbearance should be denied in its entirety.

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OPPOSITION OF MCI TELECOMMUNICATIONS CORPORATION
TO BELLSOUTH PETITION FOR FORBEARANCE

Pursuant to the Public Notice released in this docket on February 14, 1997,¹ MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby opposes the BellSouth Petition for Forbearance filed in this docket. As explained below, application of the Section 272 separation and nondiscrimination safeguards to BellSouth's reverse directory and E911 services is necessary for the protection of competition and the public interest.

BellSouth has been violating, and will continue to violate, its obligations to provide nondiscriminatory access to its directory assistance database. This precisely the type of conduct that the Section 272 safeguards, particularly the nondiscrimination requirements of Section 272(c)(1) and (e), were intended to prevent, and, given the continuing nature of BellSouth's behavior, full application of those provisions is apparently the only way to stop it. Forbearance from the

¹ Pleading Cycle Established for Comments on BellSouth's Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as Amended, to Previously Authorized Services, CC Docket No. 96-149, DA 97-346 (released Feb. 14, 1997).

application of Section 272 to BellSouth's reverse directory and E911 services therefore would be anticompetitive and should be denied.

Introduction

As BellSouth acknowledges in its petition for forbearance under Section 10 of the Communications Act, 47 U.S.C. § 160, previously authorized interLATA information services, such as its reverse directory and E911 services, are subject to the separation and nondiscrimination requirements of Section 272. Reverse directory service provides customer names and addresses in response to a telephone number. It is offered both in conjunction with traditional voice-based directory assistance service and as an on-line capability in conjunction with electronic white pages service (EWP). Both are information services and may use interLATA transport provided by BellSouth. BellSouth originally obtained authorization to provide reverse directory services pursuant to an order of the MFJ Court, which made no distinction based on whether the service was to be voice-based or on-line.² In both cases, the reverse directory service uses the same centralized database as the corresponding directory service.³

Section 10 requires the Commission to forbear from applying any provision of the Act if it determines that: enforcement of

² See United States v. Western Electric, No. 82-0192 (D.D.C. June 2, 1989).

³ See BellSouth Pet. at 2-5.

such provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in conjunction with a carrier or service are just and reasonable and not unreasonably discriminatory; enforcement of such provision is not necessary for the protection of consumers; and forbearance is consistent with the public interest. 47 U.S.C. § 160(a).

BellSouth asserts that integration of both forms of its reverse directory service with its standard directory service has already been found, in the MFJ Court's prior authorization and in a more recent CEI waiver,⁴ to be in the public interest and otherwise meets the criteria of Section 10. BellSouth argues that these services have been provided with no adverse effects on consumers or other parties and that there is no reason for the application of the Section 272 requirements to these services at this point. Indeed, BellSouth continues, application of the Section 272 separation requirements to these services may cause BellSouth to cease providing them, to the detriment of consumers. BellSouth concludes that forbearance from the requirements of Section 272 is therefore required. BellSouth presents a similar analysis with respect to its E911 service.⁵

MCI has a vital interest in the Bell Operating Companies' (BOCs') directory databases, including BellSouth's, for its own

⁴ See BellSouth Petition for Waiver of Computer III Rules for Reverse Search Capability, CC Docket No. 90-623, DA 96-674 (released April 29, 1996), recon., DA 96-1069 (released July 3, 1996) (Waiver Order).

⁵ See BellSouth Pet. at 5-8.

directory assistance services and other purposes and, pursuant to its rights under Sections 251 and 252 to dialing parity and unbundled network elements, has negotiated agreements with the BOCs for access to those databases. In these negotiations, BellSouth has refused to include in the database it makes available to MCI any listings for subscribers of local exchange carriers (LECs) other than BellSouth. BellSouth asserts that these other LECs have not authorized BellSouth to provide their subscriber listings to third parties. Nevertheless, BellSouth includes information for subscribers of LECs serving areas within BellSouth's territory in the database it uses in providing its own directory assistance and EWP services. Since the same databases that are used for directory assistance and EWP services are also used for both forms of the reverse directory service, the latter obviously also includes listings for such non-BellSouth customers. Thus, BellSouth is using data for its directory assistance and reverse directory services that it refuses to make available to MCI and, presumably, other interexchange carriers (IXCs).

BellSouth's Petition Must be Denied

As a preliminary matter, it is extremely doubtful that forbearance from the nondiscrimination provisions of Section 272, or, for that matter, any nondiscrimination requirements, would ever be appropriate for a dominant carrier in any conceivable circumstances. As pointed out above, one of the requirements for the granting of a request for forbearance from the application of

a provision of the Communications Act is that "enforcement of such ... provision is not necessary to ensure that the ... practices ... by [a] ... carrier ... are not unjustly or unreasonably discriminatory." 47 U.S.C. § 160(a)(1). Since the marketplace cannot be relied upon to prevent unjust or unreasonable discrimination by a dominant carrier, and, particularly, a carrier controlling the local exchange network, it is inconceivable that there would ever be a situation in which enforcement of a nondiscrimination requirement would not be "necessary to ensure that" a BOC's practices "are not unjustly or unreasonably discriminatory." Because of this inherent contradiction in granting forbearance from the application of any nondiscrimination requirements to a BOC, BellSouth's petition must be denied, at least as to the requirements of Section 272(c)(1) and (e).

Moreover, BellSouth's discriminatory use of, and failure to make available, directory data requires denial of the petition as to those requirements in any event. Indeed, such conduct violates so many provisions of the Communications Act that BellSouth would need forbearance from all of Title 47 of the United States Code to be able to continue lawfully. First, BellSouth possesses such a complete directory database only because of its position as the monopoly local service provider throughout its vast service area. Its use of that database for its own directory and reverse directory services, while denying a portion of that database to other entities, is an unreasonable

practice under Section 201(b) of the Act.

Second, such use by BellSouth and denial to others also violates Sections 251 and 252 of the Act. The First Interconnection Order⁶ held that directory assistance is a network element that an incumbent LEC must make available on an unbundled basis upon request to a telecommunications carrier under Section 251(c)(3).⁷ Moreover, incumbent LECs are required "to provide access and unbundled elements that are at least equal-in-quality to what the incumbent LECs provide themselves...."⁸

The Second Interconnection Order⁹ held that the dialing parity provisions of Section 251(b)(3) "require[] LECs to share subscriber listing information with their competitors, in 'readily accessible' tape or electronic formats, and that such

⁶ First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, FCC 96-235 (released Aug. 8, 1996).

⁷ Id. at ¶ 538.

⁸ Id. at ¶ 313. The Commission "allow[ed] for an exception to this requirement only where it is technically infeasible to meet." Id. BellSouth has not suggested any such problem with respect to the provision of any customer listings in its directory database.

⁹ Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, FCC 96-333 (released Aug. 8, 1996).

data be provided in a timely fashion upon request."¹⁰

We agree with MCI that "by requiring the exchange of directory listings, the Commission will foster competition in the directory services market and foster new and enhanced services in the voice and electronic directory services market."... [W]e require the LEC providing the listing to share listings in a format that is consistent with what that LEC provides in its own directory.

....

We further find that a highly effective way to accomplish nondiscriminatory access to directory assistance, apart from resale, is to allow competing providers to obtain read-only access to the directory assistance databases of the LEC providing access.¹¹

Thus, an incumbent LEC must provide competing providers "nondiscriminatory access to ... directory assistance databases" "consistent with what that LEC provides in its own directory." In other words, an incumbent LEC must provide competing providers of directory assistance and reverse directory services with all listings used by the LEC for its own directory assistance and reverse directory services. There are no exceptions for listings of customers of other LECs that are made available to, and used by, a LEC that is requested to provide access to a competitive provider. Any other approach would stifle, rather than "foster[,] competition in the directory services market and ... new and enhanced services in the voice and electronic directory

¹⁰ Id. at ¶ 141.

¹¹ Id. at ¶¶ 141, 143. The Commission also noted in the Second Interconnection Order that "[t]he obligation of incumbent LECs to provide operator services and directory assistance as unbundled elements is in addition to the duties of all LECs ... under section 251(b)(3) and the rules we adopt herein." Id. at ¶ 118.

services market.'"

The competitive impact of the denial of access to other LECs' directory listings is especially severe in the case of BellSouth, since its databases contain listings for so many customers of other LECs. For example, in Florida alone, over 3,000,000 subscriber lines are served by independent LECs and are included in BellSouth's directory database. It will therefore be impossible to offer a competitive directory assistance or reverse directory assistance product without access to those listings. Such a truncated directory database is certainly not "consistent with what [BellSouth] provides in its own directory" and is not "equal in quality to what [BellSouth] provide[s] [itself]."

BellSouth's assertion that it is not able to secure the approval of other LECs to make their subscriber listings available to other providers cannot nullify the requirements of Section 251. BellSouth and all of the LECs whose listings are included in BellSouth's database must adhere to the requirements of the Communications Act. BellSouth and other LECs thus may not enter into "agreements" that override the Act. Finally, even if BellSouth could not make certain directory listings available to competing providers, then it would have to be prohibited from using those listings for its own directory assistance services, and certainly for its reverse directory services.

The requirements of Sections 201(b) and 251 are underscored by the precedents cited by BellSouth in its petition. According to BellSouth, the rationale for the MFJ Court's authorization was

that no other independent company had indicated a willingness or ability to provide reverse directory service and that, absent the requested authorization, the service likely would not be provided at all. Moreover, no other party would be injured by grant of the requested relief.¹² Here, of course, the situation is just the opposite; MCI provides interstate and intrastate interLATA directory assistance and reverse directory assistance services and intends to provide local "411" and local reverse directory services. Thus, MCI is injured competitively by BellSouth's refusal to make available all of the listings BellSouth uses for its directory services.

Similarly, BellSouth's CEI waiver for its on-line reverse directory service, also cited in its petition, was based on the Commission's finding that compliance with the CEI requirements "is not necessary to allow competing providers to offer this service."¹³ Here, by contrast, nondiscriminatory access to BellSouth's directory database is absolutely necessary for competing providers like MCI, as explained above.¹⁴

Thus, the MFJ Court's and this Commission's public interest findings upon which BellSouth relies require the opposite finding

¹² BellSouth Pet. at 6.

¹³ Waiver Order at ¶ 25.

¹⁴ Finally, BellSouth cites a filing by the Department of Justice (DOJ) with the MFJ Court in which DOJ stated that the interLATA transmission of E911 service was within the terms of prior MFJ waivers and that BOC provision of E911 service presents no threat to competition among IXCs. See BellSouth Pet. at 8 & n.20.

here -- namely, that BellSouth's reverse directory and E911 services be fully subject to the Section 272 safeguards, particularly the nondiscrimination provisions of Section 272(c)(1) and (e). The rationale of those orders was that integrated provision of directory and reverse directory assistance services enables BellSouth to offer services that would not be offered otherwise and that competition would not be injured thereby. Here, since MCI needs access to all of the listings used by BellSouth for its directory and reverse directory services in order to compete with those offerings, competition and the public interest are injured by the integrated provision of those services by BellSouth under BellSouth's current practices.

The most essential competitive safeguard in this situation -- and the one that is most egregiously violated here -- is nondiscriminatory access to BellSouth's directory database. Thus, the nondiscrimination provisions of Section 272 must be applied fully to BellSouth's directory and reverse directory services. Forbearance as to those provisions is out of the question.

Moreover, since the nondiscrimination provisions of Section 272 apply only to separate affiliates established pursuant to Section 272(a) and (b), the full application of both the separation and nondiscrimination requirements of Section 272 is necessary to prevent BellSouth's anticompetitive ongoing denial of access to part of its directory database in violation of

Sections 201(b) and 251. Accordingly, BellSouth's petition for forbearance from the application of Section 272 to its reverse directory and E911 services should be denied in its entirety. Alternatively, the petition should only be granted on condition that BellSouth make available to MCI and all other carriers all listings in BellSouth's directory database or that BellSouth not be permitted to use, for its reverse directory services, any such listings that are not provided to all other carriers.

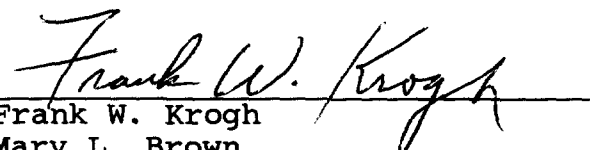
Conclusion

BellSouth's request for forbearance from the application of the Section 272 safeguards to its reverse directory and E911 services must be denied. Alternatively, its request should only be granted on condition that BellSouth provide other carriers with all of the listings that it uses for its own directory and reverse directory services.

Respectfully submitted,

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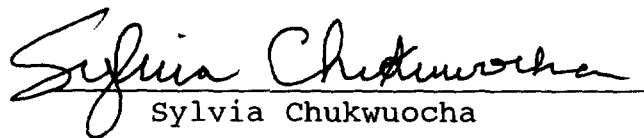
CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that a true copy of the foregoing "COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION" was served this 6th day of March, 1997, by hand delivery or first class mail, postage prepaid, upon each of the following parties:

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